SYNOPSIS

BUSINESS FRANCHISE TAX AND CORPORATE NET INCOME TAX – ASSESSMENTS ABATED – Pursuant to W. Va. Code § 11-10A-10(e), burden of proof met by Petitioner showing that the assessments are incorrect and contrary to law, in whole or in part, when its federal corporate net income tax returns, when filed, are both accepted by the Internal Revenue Service and agreed to by Tax Commissioner's counsel.

FINAL DECISION

A Tax Examiner with the Field Auditing Division (the "Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner") conducted an audit of the books and records of the Petitioner.

Thereafter, on August 11, 2003, the Director of this Division of the Commissioner's Office issued a business franchise tax assessment against the Petitioner. This assessment was for the period of July 1, 1998 through June 30, 2002, for tax, interest, through August 31, 2003, and additions to tax, for a total assessed liability.

Also, on August 11, 2003, the Commissioner issued a corporate net income tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 24 of the West Virginia Code, for the period of July 1, 1997 through June 30, 2002, for tax, interest, through August 31, 2003, and additions to tax, for a total assessed liability.

Written notice of these assessments was served on the Petitioner.

Thereafter, by mail postmarked October 14, 2003, the Petitioner timely filed with this tribunal, petitions for reassessment. W. Va. Code § 11-10A-8(1) [2002].

Subsequently, written notice of a hearing on the petitions was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code 11-10A-10 [2002].

At the conclusion of the hearing, the administrative law judge gave Petitioner's representative until February 13, 2004 to receive approval from the Internal Revenue Service ("IRS") concerning a carry forward loss on its corporate net income tax returns for the audit period.

FINDINGS OF FACT

Subsequent to this tribunal's receipt of Petitioner's federal corporate net income tax information, the Tax Commissioner's counsel agreed to accept the validity of same in lieu of the estimated corporate net income tax assessment.

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessments are incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In this instance Petitioner's federal corporate net income tax returns, having been accepted by the Internal Revenue Service and later agreed to by the Tax Commissioner's counsel, mandate that the same supplant both of the estimated tax assessments, resulting in the abatement of said tax assessments.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1.   In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2.   The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue raised.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business franchise tax assessment issued against the Petitioner for the period of July 1, 1998 through June 30, 2002, for tax, interest, through August 31, 2003, and additions to tax, should be and is hereby **VACATED,** and the Petitioner owes no further business franchise tax liability for the period in question.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the state corporate net income tax assessment issued against the Petitioner for the period of July 1, 1997 through June 30, 2002, for tax, interest, through August 31, 2003, and additions to tax, should be and is hereby **VACATED**, and the Petitioner owes no further state corporate net income tax liability for the period in question.